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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID ANTHONY BROOKS,

Defendant and Appellant.

A152731

(San Mateo County
Super. Ct. No. SC074840A)

David Anthony Brooks appeals from a post judgment order amending his abstract of judgment to indicate which statute provided authority for his presentence custody credits. Appellate counsel for Brooks filed an opening brief identifying no potentially arguable issues and asking this court to independently review the record under *People v. Wende* (1979) 25 Cal.3d 436. In addition, Brooks has had an opportunity to file a supplemental brief with this court but has not done so. We have reviewed the entire record and conclude no issue warrants further briefing, but we remand to the trial court to correct the abstract of judgment to reflect the correct number of presentence conduct credits.

I. FACTUAL AND PROCEDURAL BACKGROUND¹

Brooks was charged by amended information with residential burglary (count one) and attempted residential burglary (count two). Each count also alleged that a person other than an accomplice was present in the residence, thereby making the charge a violent felony. (Pen. Code, § 667.5, subd. (c)(21).) The amended information also alleged several prior convictions, including two convictions alleged as both strike and serious felony convictions. (Pen. Code, §§ 1170.12, subd. (c)(1) & 667, subd. (a).)

A jury found Brooks guilty of both counts and found true both allegations that the residences were occupied at the time of the crimes. Brooks waived jury trial as to the charged prior convictions. The trial court found the two strike and two serious felony priors to be true.

On January 25, 2013, the trial court sentenced Brooks to a term of 12 years, eight months in state prison. It awarded him presentence credits of 506 days actual custody time and conduct credits of 74 days for a total of 580 days presentence credits. The court did not indicate whether the presentence credits were calculated under Penal Code section 4019 or Penal Code section 2933.1. Following sentencing, an abstract of judgment filed February 5, 2013 reflected the sentence and credits as indicated by the trial court, but also failed to indicate whether the conduct credits were calculated under Penal Code sections 2933, 2933.1, or 4019.

The trial court filed an amended abstract of judgment on October 6, 2017. On the amended abstract, in the box entitled “credit for time served,” the credits are calculated the same as in the February 2013 abstract (506 days and conduct credits of 74 days for a total of 580 days presentence credits), but in the “local conduct” box a checkmark

¹ Brooks made two separate requests for judicial notice, asking us to take judicial notice of select portions of the record in a related action, the appeal from the convictions and sentencing after jury trial (*People v. Brooks* (July 30, 2014, A137795) [nonpub. opn.]). We granted both requests without making a determination of relevance. We considered portions of the record in No. A137795 as they related to our *Wende* review of the amended abstract of judgment at issue here.

indicates that the conduct credits were calculated in accordance with Penal Code section 2933.1.

II. DISCUSSION

We see no error here with the conviction, but we do see two errors in the abstract of judgment, one of which will affect the sentence in a minor way. First, it appears that the Penal Code § 667, subdivision (a) enhancements were placed in the incorrect location: instead of being listed under section 2, “ENHANCEMENTS charged and found to be true TIED TO SPECIFIC COUNTS,” the information should be listed under section 3, “ENHANCEMENTS charged and found to be true for PRIOR CONVICTIONS OR PRISON TERMS (mainly in the PC 667 series).”

Second, there is an error in the computation of presentence custody credits that must be corrected. A sentencing court is without jurisdiction to modify the sentence once a judgment is rendered except in limited circumstances. (*People v. Turrin* (2009) 176 Cal.App.4th 1200, 1204 (*Turrin*).) “A trial court may correct a clerical error, but not a judicial error, at any time. A clerical error is one that is made in recording the judgment; a judicial error is one that is made in rendering the judgment.” (*Id.* at p. 1205.) “‘[A] court has the inherent power to correct clerical errors in its records so as to make these records reflect the true facts. [Citations.] The power exists independently of statute and may be exercised in criminal as well as in civil cases.’ ” (*People v. Mitchell* (2001) 26 Cal.4th 181, 185 (*Mitchell*), quoting *In re Candelario* (1970) 3 Cal.3d 702, 705.) Such clerical errors may be corrected at any time. (*Mitchell, supra*, 26 Cal.4th at p. 185, *In re Candelario, supra*, 3 Cal.3d at p. 705.)

In Brooks’s case, the jury convicted him in count one of first degree burglary (Pen. Code, § 460) and found true the allegation that someone other than an accomplice was present at the time of the burglary (Pen. Code, § 667.5, subd. (c)(21)), which made the offense a violent felony for sentencing purposes. Penal Code section 2933.1, subdivision (c) mandates that “the maximum credit that may be earned against a period of confinement in, or commitment to, a county jail . . . following arrest and prior to placement in the custody of the Director of Corrections, shall not exceed 15 percent of

the actual period of confinement” for a person convicted of a violent felony. It appears there was no dispute over the credit limitation at sentencing; the court merely failed to designate what statute was being followed when calculating presentence custody credits. The amended abstract of judgment filed in October 2017 made clear that the credits were calculated pursuant to Penal Code section 2933.1. Thus, the correction was a mere clerical error that the court was permitted to correct at any time.

However, we do note that in calculating the conduct credit there appears to be yet another error. Brooks accrued 506 days of actual time in custody. Although his conduct credits were limited to 15 percent pursuant to Penal Code section 2933.1, he was entitled to “exactly 15.00 percent and nothing more,” which has been interpreted as “the greatest whole number of days which does not ‘exceed 15[.00] percent of the actual period of confinement. . . .’ ” (*People v. Ramos* (1996) 50 Cal.App.4th 810, 816.) Presentence conduct credits should be calculated “to comply with but not exceed the 15.00 percent limitation of section 2933.1.” (*Ramos*, at p. 817.) “ ‘A sentence that fails to award legally mandated custody credit is unauthorized and may be corrected whenever discovered.’ ” (*People v. Cardenas* (2015) 239 Cal.App.4th 220, 235; see *People v. Jack* (1989) 213 Cal.App.3d 913, 915–917; *People v. Acosta* (1996) 48 Cal.App.4th 411, 428, fn. 8 [“The failure to award an adequate amount of credits is a jurisdictional error which may be raised at any time.”].) Although we do not have the probation report calculation before us, on this limited record we accept that Brooks had accrued 506 days of actual custody time. Fifteen percent of 506 is 75.9; following the guidance in *Ramos, supra*, at page 817, Brooks is entitled to 75 days of presentence conduct credit (instead of the 74 days he was awarded).

III. DISPOSITION

The trial court is directed to prepare and forward to the Department of Corrections and Rehabilitation an amended abstract of judgment awarding Brooks 581 days of total presentence custody credits, consisting of 506 days actual time served plus 75 days of conduct credits. The trial court is also directed to correct the description and the location

of the sentencing enhancements in the abstract so that it accurately reflects the oral pronouncement of the sentence on January 25, 2013.

We see no other issues that merit briefing and in all other respects, the judgment is affirmed.

Streeter, Acting P.J.

We concur:

Tucher, J.

Brown, J.

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